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ROEHRIG MARITIME, LLC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Civil No. 07 CIV 7986 (PKL)

JOHN WESTGATE,

Plaintiff,

ANSWER

-against-

ROEHRIG MARITIME, LLC,

Defendant.

Defendant, ROEHRIG MARITIME, LLC, ("Roehrig") by its attorneys, RUBIN, FIORELLA & FRIEDMAN, LLP, as and for its Answer to the Complaint alleges upon information belief as follows:

1. Admits that Roehrig conducted business within this forum's boundaries, but denies the remaining allegations in paragraph "1" of the Complaint.
2. Denies the allegations in paragraph "2" of the Complaint.
3. Admits that plaintiff was an employee of Roehrig, but denies the remaining allegations in paragraph "3" of the Complaint.
4. Denies the allegations in paragraph "4 " of the Complaint.
5. Denies the allegations in paragraph "5 " of the Complaint.

FIRST AFFIRMATIVE DEFENSE

The complaint fails to state a cause of action or a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The incident alleged in the complaint, which is denied, occurred without the fault, privity of knowledge of Roehrig, and the amount of damages, if any, may exceed the value of Roehrig's interest in the vessel. Roehrig is therefore entitled to exoneration from, or limitation of liability, to the value of the vessel pursuant to the Limitation of Liability Act of 1851, 46 U.S.C. 30501 et. seq.

THIRD AFFIRMATIVE DEFENSE

Assumption of the risk.

FOURTH AFFIRMATIVE DEFENSE

Failure to mitigate damages.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the equitable doctrines of laches, estoppel, unclean hands and waiver.

SIXTH AFFIRMATIVE DEFENSE

Any injuries or damages alleged to have been suffered by plaintiff, which are denied, were caused or contributed to by acts and/or omissions of third party over whom Roehrig had no control.

SEVENTH AFFIRMATIVE DEFENSE

Any injuries or damages alleged to have been suffered by plaintiff, which are denied, were caused, or contributed to, by plaintiff's failure to properly perform his duties.

EIGHTH AFFIRMATIVE DEFENSE

If plaintiff suffered damages, which is denied, the amount of damages recoverable should be

diminished in proportion to which plaintiff's culpable conduct contributed to the incident alleged in the complaint.

NINTH AFFIRMATIVE DEFENSE

At all material times, the vessel in question and its equipment and appurtenances were seaworthy, staunch, and fit for their particular purpose.

TENTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to maintenance and care and assuming arguendo that he was, he has failed to make a written demand and failed to provide Roehrig with documentation establishing the daily amount of any recoverable expenditures.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to the warranty of seaworthiness.

TWELFTH AFFIRMATIVE DEFENSE


Any injuries or damages alleged in the complaint, which are denied, were pre-existing.

WHEREFORE, Defendant, ROEHRIG MARITIME, LLC prays for judgement in its favor, dismissing the Complaint, with prejudice, together with costs and attorneys' fees and such other and further relief as to this Court may seem just and reasonable.

Dated: New York, New York
November 15, 2007

RUBIN, FIORELLA & FRIEDMAN, LLP

By:



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